

JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

APR 11 2006

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BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION
IN RE VIOXX MARKETING, SALES PRACTICES AND PRODUCTS
LIABILITY LITIGATION

BEFORE WM. TERRELL HODGES,* CHAIRMAN, JOHN F. KEENAN, D.
LOWELL JENSEN, J. FREDERICK MOTZ,* ROBERT L. MILLER, JR.,
KATHRYN H. VRATIL AND DAVID R. HANSEN, JUDGES OF THE PANEL

TRANSFER ORDER

Presently before the Panel are motions, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by plaintiffs in 94 actions and by health care defendants in the Northern District of Ohio action to vacate the Panel's orders conditionally transferring the actions listed on Schedule A to the Eastern District of Louisiana for inclusion in the Section 1407 proceedings occurring there in this docket. Merck & Co., Inc., favors inclusion of these actions in MDL-1657 proceedings. Medco Health Solutions, Inc., supports inclusion of the Western District of Kentucky action in which it is a defendant in MDL-1657.

On the basis of the papers filed and hearing session held, the Panel finds that these actions involve common questions of fact with actions in this litigation previously transferred to the Eastern District of Louisiana. Transfer of the actions to that district for inclusion in the coordinated or consolidated pretrial proceedings occurring there will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. Any pending or anticipated motions to remand to state court can be presented to and decided by the transferee judge. *See, e.g., In re Ivy*, 901 F.2d 7 (2d Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001). The Panel further finds that transfer of these actions is appropriate for the reasons expressed in the original order directing centralization in this docket. In that order, the Panel held that the Eastern District of Louisiana was a proper Section 1407 forum for actions involving claims of liability for allegedly adverse effects arising from the ingestion of Vioxx. *See In re Vioxx Products Liability Litigation*, 360 F.Supp.2d 1352 (J.P.M.L. 2005).

Some opposing plaintiffs and the health care defendants argue that the presence of individual and/or local questions of fact as well as differing legal theories should militate against inclusion of these actions in MDL-1657 proceedings. We are unpersuaded by these arguments. Inclusion of these actions in Section 1407 proceedings has the salutary effect of placing all the related actions before a single

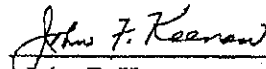
* Judges Hodges and Motz took no part in the decision of this matter.

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judge who can formulate a pretrial program that: 1) prevents repetition of previously considered matters; 2) allows pretrial proceedings with respect to any non-common issues to proceed concurrently with pretrial proceedings on common issues, *In re Multi-Piece Rim Products Liability Litigation*, 464 F.Supp. 969, 974 (J.P.M.L. 1979); and 3) ensures that pretrial proceedings will be conducted in a manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties. *See In re StarLink Corn Products Liability Litigation*, 152 F.Supp.2d 1378 (J.P.M.L. 2001). It may be, on further refinement of the issues and close scrutiny by the transferee judge, that some claims or actions can be remanded to their transferor districts for trial in advance of the other actions in the transferee district. Should the transferee judge deem remand of any claims or actions appropriate, procedures are available whereby this may be accomplished with a minimum of delay. *See Rule 7.6, R.P.J.P.M.L.*, 199 F.R.D. at 436-38.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, these actions are transferred to the Eastern District of Louisiana and, with the consent of that court, assigned to the Honorable Eldon E. Fallon for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

FOR THE PANEL:


John F. Keenan
Acting Chairman

SCHEDULE A

MDL-1657 -- In re Vioxx Marketing, Sales Practices and Products Liability Litigation

Middle District of Alabama

Michael D. May v. Merck & Co., Inc., et al., C.A. No. 3:05-998

Eastern District of California

Clara Puma v. Merck & Co., Inc., et al., C.A. No. 2:05-2203

Vance Skillsky v. Merck & Co., Inc., et al., C.A. No. 2:05-2218

Clayton Welch v. Merck & Co., Inc., et al., C.A. No. 2:05-2267

Northern District of California

Charles Axworthy, et al. v. Merck & Co., Inc., et al., C.A. No. 3:05-4646

Luisa Greer, et al. v. Merck & Co., Inc., et al., C.A. No. 3:05-4657

Middle District of Florida

Michael C. Richardson v. Merck & Co., Inc., et al., C.A. No. 3:05-1193

Southern District of Illinois

Gloria Jackson, et al. v. Merck & Co., Inc., et al., C.A. No. 3:05-822

Barbara Allen, et al. v. Merck & Co., Inc., et al., C.A. No. 3:05-841

Barbara Beyer v. Merck & Co., Inc., et al., C.A. No. 3:05-865

Eastern District of Kentucky

Brenda Sparks, et al. v. Merck & Co., Inc., C.A. No. 0:05-201

Kenneth Michael Short, et al. v. Merck & Co., Inc., C.A. No. 5:05-426

Lawrence K. Butcher v. Merck & Co., Inc., C.A. No. 6:05-570

Jerry Anderson, et al. v. Merck & Co., Inc., et al., C.A. No. 6:05-573

John Mullins, et al. v. Merck & Co., Inc., C.A. No. 6:05-586

Juanetta Bush, et al. v. Merck & Co., Inc., et al., C.A. No. 6:05-587

Western District of Kentucky

Debra Humburg, et al. v. Merck & Co., Inc., et al., C.A. No. 1:05-173

James L. Bragg, Jr., etc. v. Merck & Co., Inc., et al., C.A. No. 1:05-175

Riley Wells v. Merck & Co., Inc., et al., C.A. No. 1:05-177

Patricia Oakes, etc. v. Merck & Co., Inc., et al., C.A. No. 1:05-178

Dorothy Payne, etc. v. Merck & Co., Inc., et al., C.A. No. 1:05-179

Ethel Wolf v. Merck & Co., Inc., et al., C.A. No. 1:05-180

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Western District of Kentucky (Continued)

John Nowak, et al. v. Merck & Co., Inc., et al., C.A. No. 1:05-181
Randall Pyles, et al. v. Merck & Co., Inc., et al., C.A. No. 1:05-186
Thelma Jean Phillips, etc. v. Merck & Co., Inc., et al., C.A. No. 1:05-200
Carey L. Mynhier, et al. v. Merck & Co., Inc., C.A. No. 3:05-633
William Clayton, et al. v. Merck & Co., Inc., C.A. No. 3:05-637
Charles Schultise v. Merck & Co., Inc., C.A. No. 3:05-638
Margaret Vandivier v. Merck & Co., Inc., C.A. No. 3:05-639
Mary E. Lester v. Merck & Co., Inc., C.A. No. 3:05-640
Sabina Chambers v. Merck & Co., Inc., C.A. No. 3:05-641
Richard W. Allen, Sr., et al. v. Merck & Co., Inc., C.A. No. 3:05-643
Glendon Dixon v. Merck & Co., Inc., C.A. No. 3:05-644
Jeffrey Joyce v. Merck & Co., Inc., C.A. No. 3:05-645
James A. Daniels et al. v. Merck & Co., Inc., et al., C.A. No. 3:05-651
Lawrence Shepherd, et al. v. Merck & Co., Inc., C.A. No. 3:05-652
Pamela Winters, etc. v. Merck & Co., Inc., C.A. No. 3:05-654
Jennifer M. Popp, etc. v. Merck & Co., Inc., et al., C.A. No. 3:05-655
Isabella B. Cummings, et al. v. Merck & Co., Inc., C.A. No. 3:05-657
Fleam Leach v. Merck & Co., Inc., C.A. No. 3:05-660
Tim Ellis, et al. v. Merck & Co., Inc., et al., C.A. No. 3:05-661
Barbara Keeling v. Merck & Co., Inc., C.A. No. 3:05-662
Marlynn Fox, etc. v. Merck & Co., Inc., et al., C.A. No. 3:05-663
Sue R. Gardner, etc. v. Merck & Co., Inc., C.A. No. 3:05-664
Tina Day v. Merck & Co., Inc., et al., C.A. No. 3:05-665
Hazel McKee, et al. v. Merck & Co., Inc., et al., C.A. No. 3:05-666
Olando Simpson, et al. v. Merck & Co., Inc., C.A. No. 3:05-667
Michael F. Simpson, et al. v. Merck & Co., Inc., C.A. No. 3:05-668
Susan Walker, etc. v. Merck & Co., Inc., et al., C.A. No. 3:05-670
Daniel Ryan v. Merck & Co., Inc., et al., C.A. No. 3:05-671
Sharon Schafer, et al. v. Merck & Co., Inc., C.A. No. 3:05-672
Joan Anne Schwartz, etc. v. Merck & Co., Inc., C.A. No. 3:05-673
Perry Schneider, et al. v. Merck & Co., Inc., et al., C.A. No. 3:05-674
Mary Louise Schmidt, etc. v. Merck & Co., Inc., C.A. No. 3:05-675
Manson Whelan v. Merck & Co., Inc., C.A. No. 3:05-676
David G. Thomas v. Merck & Co., Inc., C.A. No. 3:05-677
A. Walter Tyson, etc. v. Merck & Co., Inc., et al., C.A. No. 3:05-678
Daniel Gill v. Merck & Co., Inc., et al., C.A. No. 3:05-679
Carl Ansert, Jr., et al. v. Merck & Co., Inc., et al., C.A. No. 3:05-680
Onna James, et al. v. Merck & Co., Inc., et al., C.A. No. 3:05-684
Garlin Cupp, et al. v. Merck & Co., Inc., et al., C.A. No. 3:05-686
Martha Sue Taylor v. Merck & Co., Inc., et al., C.A. No. 3:05-692
Sarah E. Nichols, etc. v. Merck & Co., Inc., et al., C.A. No. 3:05-693
William Mohon, et al. v. Merck & Co., Inc., et al., C.A. No. 3:05-694
Scarlett Macy, etc. v. Merck & Co., Inc., et al., C.A. No. 3:05-695

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Western District of Kentucky (Continued)

Shannon M. Age, et al. v. Merck & Co., Inc., et al., C.A. No. 3:05-696
Faye Byers, et al. v. Merck & Co., Inc., C.A. No. 3:05-711
Dora Gorman, et al. v. Merck & Co., Inc., et al., C.A. No. 3:05-712
Cleo D. Gilbert, et al. v. Merck & Co., Inc., C.A. No. 3:05-713
Lorenia Henson, etc. v. Merck & Co., Inc., C.A. No. 3:05-714
Darrell G. Moore, et al. v. Merck & Co., Inc., C.A. No. 3:05-715
Billy Joe Logsdon, et al. v. Merck & Co., Inc., et al., C.A. No. 3:05-717
Kathryn O'Neill v. Merck & Co., Inc., et al., C.A. No. 3:05-718
Paul E. Mangeot, et al. v. Merck & Co., Inc., C.A. No. 3:05-719
Millard T. Shepherd v. Merck & Co., Inc., C.A. No. 3:05-724
Luther B. Yount, Jr., et al. v. Merck & Co., Inc., et al., C.A. No. 3:05-729
Ellen Rittenhouse, et al. v. Merck & Co., Inc., et al., C.A. No. 3:05-731
Ola Nelson v. Merck & Co., Inc., et al., C.A. No. 5:05-206
Michael E. Wilson v. Merck & Co., Inc., et al., C.A. No. 5:05-210
Wanda Sue Parker, et al. v. Merck & Co., Inc., et al., C.A. No. 5:05-212

Eastern District of Missouri

Alene Schwent, et al. v. Merck & Co., Inc., et al., C.A. No. 4:05-1745
James Coleman v. Merck & Co., Inc., C.A. No. 4:05-1944
Robert Ruzicka, et al. v. Merck & Co., Inc., C.A. No. 4:05-1945
Thelma Zimmerman, et al. v. Merck & Co., Inc., et al., C.A. No. 4:05-1955
Samella Butler, et al. v. Merck & Co., Inc., et al., C.A. No. 4:05-1956
Steve Pickard, et al. v. Merck & Co., Inc., et al., C.A. No. 4:05-1969
Martha Maxwell, et al. v. Merck & Co., Inc., et al., C.A. No. 4:05-1970
Roy Lacey, et al. v. Merck & Co., Inc., et al., C.A. No. 4:05-1977
Brian Lawson, et al. v. Merck & Co., Inc., et al., C.A. No. 4:05-2046
Joy Cora v. Merck & Co., Inc., et al., C.A. No. 4:05-2225

Western District of Missouri

John Webster, et al. v. Merck & Co., Inc., et al., C.A. No. 4:05-1035

Southern District of New York

Jose Rivera, etc. v. Merck & Co., Inc., et al., C.A. No. 1:05-9383

Northern District of Ohio

William Jeffries, et al. v. Merck & Co., Inc., et al., C.A. No. 1:05-2547

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Eastern District of Tennessee

James E. Queen, et al. v. Merck & Co., Inc., et al., C.A. No. 1:05-306

Middle District of Tennessee

Ruth Faulkner, etc. v. Merck & Co., Inc., et al., C.A. No. 3:05-1006